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successor in interest to first named
6 Defendant Twitter, Inc.

7
8 **UNITED STATES DISTRICT COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA**
10 **SAN FRANCISCO DIVISION**

11 Facilitate Corporation Pte Ltd,

12 Plaintiff,

13 v.
14

15 Twitter, Inc. and X Corp., Inc,

16 Defendants.

No. 4:23-cv-3242-YGR

**ADMINISTRATIVE MOTION TO FILE
UNDER SEAL**

1 **I. INTRODUCTION**

2 Pursuant to Civil Local Rules 7-11 and 79-5 of the Northern District of California,
3 Defendant X Corp., as successor in interest to first named Defendant Twitter, Inc. (“X Corp.”),
4 hereby moves the Court to issue an administrative order authorizing the filing under seal of X
5 Corp.’s Supplemental Rule 7.1 Corporate Disclosure Statement and Certification Pursuant to
6 Local Rule 3-15 (“Supplemental Corporate Disclosure Statement”), and, because of risk of
7 threats, harassment, and invasion of privacy, certain identifying information of the X Corp.
8 employee submitting the supporting declaration (the “Employee Declaration”).

9 On August 21, 2023, Plaintiff’s counsel requested that X Corp. file a supplemental
10 corporate disclosure statement. X Corp. has now submitted concurrently herewith a
11 Supplemental Corporate Disclosure Statement listing of all shareholders that have an ownership
12 interest in the privately held corporation and parent company to X Corp., X Holdings Corp. (“X
13 Holdings”).

14 However, because the identities of these owners constitute private and confidential
15 business information that is not publicly available and the disclosure of which would result in
16 injury, X Corp. requests that the Court authorize this filing under seal. Because the sole
17 purpose of the Corporate Disclosure Statement under Local Rule 3-15 is to allow the Judge to
18 determine whether a conflict exists that would necessitate recusal, no legitimate purpose is
19 served by any public-facing filing of this private and confidential information.

20 Notably, Judge Illston, on June 13, 2023 in *Anoke, et al. v. Twitter, Inc., et al.*, No. 23-cv-
21 02217-SI, approved this same request to seal the information contained in the Supplemental
22 Corporate Disclosure Statement, made by X Corp. and X Holdings, over opposition from the
23 same counsel that is representing Plaintiff here. ECF 39, Order Granting Administrative
24 Motion to File Under Seal (N.D. Cal. June 13, 2023). Judge Chen, on June 26, 2023, in *Global*
25 *Data Strategy, Ltd v. Twitter, Inc., et al.*, No. 3:23-cv-02266-EMC, likewise approved the same
26 request (albeit unopposed) based on the same rationale. ECF 20, Order Granting Unopposed
27 Administrative Motion to File Under Seal.

28 Plaintiff has indicated that it will not oppose the request to seal the identifying

1 information of the X Corp. employee submitting the Employee Declaration, but intends to
 2 oppose the request to seal the Supplemental Corporate Disclosure Statement.¹

3 **II. LEGAL STANDARD**

4 Courts apply a “strong presumption in favor of access” to court records. *Kamakana v. City*
 5 *and Cty. Of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006). However, the presumption of access
 6 to court records can be overcome when a party demonstrates important countervailing interests in
 7 maintaining the confidentiality of sensitive and private personal or business information. *San*
 8 *Jose News v. U.S. Dist. Ct.*, 187 F.3d 1096, 1102 (9th Cir. 1999). Confidentiality protections are
 9 not limited to trade secrets. *See, e.g., Pintos v. Pacific Creditors Assoc.*, 504 F.3d 792, 801 (9th
 10 Cir. 2007); *Hagestead v. Tragesser*, 49 F.3d 1430, 1434 (9th Cir. 1995); *see also* Fed. R. Civ.
 11 Proc. 26(c)(1)(G) (permitting protection of “trade secrets” and other “confidential commercial
 12 information.”). Nor are confidentiality protections limited to a company’s sensitive financial
 13 information, business forecasts, and intellectual property. “In deciding whether sufficient
 14 countervailing interests exist, the court will look to the public interest in understanding the
 15 judicial process and whether disclosure of the material could result in improper use . . .” *Phillips*
 16 *v. Gen. Motors Corp.*, 307 F.3d 1206, 1213 (9th Cir. 2002).

17 In addition, under Article I, section 1 of the California Constitution, persons have a
 18 constitutional inalienable right to privacy. This right to privacy includes the privacy of a person’s
 19 financial information, such as investments and financial holdings. *See Valley Bank of Nevada v.*
 20 *Superior Ct.*, 15 Cal. 3d 652, 656, (1975) (discussing the “inalienable right” of privacy under the
 21 California Constitution and finding that courts “may safely assume that the right of privacy extends
 22 to one's confidential financial affairs as well as to the details of one's personal life”). The existence
 23 of an ownership share and/or interest in a private corporation clearly constitutes a person’s private
 24 financial information that is protected under the California Constitution.

25 Courts also draw an important distinction between the standard for the sealing of records
 26 attached to dispositive motions versus non-dispositive motions. *See, e.g., Best Odds Corp. v. iBus*

28 ¹ Plaintiff here is represented by the same counsel as plaintiffs in *Anoke* and *Global Data*.

1 *Media Ltd.*, No. 2:14-cv-00932-RCJ-VCF, 2014 WL 5687730, *2 (Nov. 4, 2014) (citing
 2 *Kamakana*, 447 F.3d 1172 at 1180). “This distinction is predicated on the fact that different
 3 interests are at stake with dispositive and non-dispositive motions.” *Best Odds Corp.*, 2014 WL
 4 5687730, at *2. As a result, “[w]ith non-dispositive motions, *private interests predominate*.” *Id.*
 5 (emphasis added). A request to seal records attached to non-dispositive motions “merely requires
 6 satisfying Rule 26(c)” and a showing of “good cause,” and the district court has “much flexibility
 7 in balancing and protecting the interests of private parties” under this standard. *Id.* Indeed, “the
 8 good cause standard may be satisfied by showing mere embarrassment, incrimination, or
 9 exposure to undue litigation expenses.” *Id.* (citing Fed. R. Civ. P. 26(c)).

10 **III. ARGUMENT**

11 The Court should grant X Corp.’s motion to authorize the filing under seal of its
 12 Supplemental Corporate Disclosure Statement and the identifying information of the X Corp.
 13 employee submitting the Employee Declaration.

14 **A. Supplemental Corporate Disclosure Statement Should Be Filed Under Seal**

15 The Supplemental Corporate Disclosure Statement is not a motion, let alone a dispositive
 16 motion, but rather a document the sole purpose of which is for the assigned judge to consider
 17 whether any conflict exists that would require recusal. Here, good cause exists to seal the
 18 portions of the filing that reveal the identifies of X Holdings’ owners/shareholders due to the
 19 countervailing interests in maintaining the confidentiality of this sensitive confidential and private
 20 business information. The owners/shareholders of X Holdings include various individual persons,
 21 private family and other trusts, and other private entities (such as funds, LLCs and corporations).
 22 Employee Declaration, ¶ 3. As a matter of routine practice and policy, X Holdings does not
 23 publish or make publicly available information regarding its owners/shareholders and treats such
 24 information as confidential. *Id.* Individuals and entities investing and taking an ownership
 25 interest in a private corporation such as X Holdings expect that such information will remain
 26 private. *Id.* The disclosure of such information violates this expectation of privacy. Also, in
 27 certain cases, X Holdings is contractually bound to keep such information confidential. *Id.*

28 Denying X Corp.’s request for sealing here will cause injury to the owners/shareholders

1 whose identities would be disclosed in a public court filing, and to X Holdings by revealing its
2 confidential business information. The wholesale disclosure of information regarding its
3 owners/shareholders potentially could enable X Holdings' competitors to undermine X Holdings'
4 competitive position in the marketplace, allow current or prospective business partners or
5 counterparties to take unfair advantage of X Holdings in negotiations or other business affairs, or
6 otherwise prejudice X Holdings' business interests. To that end, X Holdings has policies that
7 prohibit employees from accessing information beyond what is reasonably necessary to perform
8 their duties, limiting access to certain non-public information, permitting access to documents and
9 data on a need-to-know basis, and requiring employees to sign confidentiality agreements.
10 Employee Declaration, ¶ 4. The act of disclosing (and making public) financial information
11 protected by a right of privacy itself constitutes an injury to owners' privacy interests.

12 No less restrictive alternative exists to sealing this information that be sufficient to protect
13 the interests at stake here.

14 The disclosure of X Holdings' shareholders to the Court *under seal* would fully comply
15 with and promote the purposes underlying Rule 7.1 and Civil Local Rule 3-15. Rule 7.1 of the
16 Federal Rules of Civil Procedure serves to "support properly informed disqualification decisions"
17 by the Court. F.R.C.P. 7.1, Committee Notes on Rules – 2002. Similarly, Civil Local Rule 3-15
18 is intended to aid the Court in determining whether any potential conflicts of interest exist that
19 would lead the assigned Judge to recuse him or herself. *See* N.D. Cal. Civil L-R 3-15(b)(1) ("The
20 Certification must disclose whether the party is aware of any conflict, financial or otherwise, that
21 the presiding judge may have with the parties to the litigation."). As a result, X Corp.'s filing of
22 the Supplemental Corporate Disclosure Statement under seal to the Court and redacting the
23 identities of X Holdings' shareholders/owners from the publicly filed document fully satisfies all
24 competing interests -- allowing the Court to determine whether a conflict exists while
25 simultaneously safeguarding confidential and private business and financial information and
26 preventing potential misuse of this information. *See Best Odds Corp.*, 2014 WL 5687730, at *2
27 (granting the defendant's motion to file a redacted certificate of interested parties and noting that
28 sealing the disclosure will "(1) satisfy Rule 7.1's purpose, by enabling the court to determine

1 whether a conflict of interest exists, and (2) act as a prophylactic against potential[] litigation
2 abuses that will needlessly increase the cost of litigation.”).

3 Federal Rule of Civil Procedure 7.1 and Civil Local Rule 3-15 serve the Court and its
4 interests in avoiding potential conflicts of interest. X Corp. has made compliant disclosures that
5 afford this Court the opportunity to assess whether any conflict of interest exists.

6 Indeed, Judge Illston and Judge Chen recently considered and agreed with these very
7 arguments in connection with requests by X Corp. to seal the same information that is set forth in
8 X Corp.’s Supplemental Corporate Disclosure Statement here. *Anoke*, ECF 36-39, *Global Data*,
9 ECF 19-20. Judge Illston did so over opposition from counsel to Plaintiff in this matter, who is
10 counsel of record to Plaintiffs in *Anoke*. *Anoke*, ECF 39. The same result should be reached in
11 this case.

12 **B. Certain Information In the Employee Declaration Should Be Filed Under Seal**

13 Under Local Rule 79-5(e), the Court should issue an order sealing the identifying
14 information of the X Corp. employee submitting the Employee Declaration. X Corp. proposes a
15 narrow sealing solely to redact the name and identifying information of the declarant, and
16 Plaintiff does not oppose this request. A redacted version of the Employee Declaration has been
17 submitted herewith.

18 Permitting X Corp. to file the narrowly redacted X Corp. Employee Declaration would
19 protect the declarant from threats, harassment, and an invasion of privacy of their identity were
20 disclosed, without undermining public access to the substantive information contained in the
21 Employee Declaration. Employee Declaration, ¶ 6; *see, e.g., EEOC v. Dial Corp.*, No. 99 C
22 3356, 2000 WL 684195, at *3 (N.D. Ill. May 16, 2000) (finding good cause for sealing
23 information “specifically identifying the persons about which information is given, whether by
24 deposition or otherwise,” to avoid the risk of their reputations being unfairly affected “if
25 identification were made”).

26 Courts routinely seal similar information due to privacy concerns. *See, e.g., Hunt v.*
27 *Cont’l Cas. Co.*, No. 13-cv-05966, 2015 WL 5355398, at *2 (N.D. Cal. Sept. 14, 2015) (ordering
28 redaction of names of defendant’s employees and finding information “implicates important

1 privacy concerns of non-parties -- whose names are not relevant to the disposition of this case --
 2 that outweigh the public's interest in disclosure"); *In re Bofi Holdings, Inc. Sec. Litig.*, No. 3:15-
 3 cv-02324, 2016 WL 5390533, at *16 (S.D. Cal. Sept. 27, 2016 (finding the "fear [of] retaliation
 4 and potential harassment" of employees constituted "compelling reasons that outweigh the
 5 public's interest in disclosure" of identities).

6 X Corp.'s redactions are narrowly tailored to seek seeking of only that material that is
 7 necessary to protect the declarant and that is not relevant to the substance of this case. Here, as in
 8 other cases, the declarant's "name[] [is] not relevant to the disposition of this case," and
 9 "implicates important privacy concerns ... that outweigh the public's interest in disclosure," such
 10 as possible security concerns, threats, or harassment. Employee Declaration, ¶ 6; *Hunt*, 2015 WL
 11 5355398, at *2; *see also Martell v. X Corp.*, No. 1:23-cv-05449, ECF 12, Notification of Docket
 12 Entry (E.D. Ill. Aug. 16, 2023) (granting unopposed request to seal certain information in support
 13 of employee declaration). There is no less restrictive alternative to sealing because X Corp. seeks
 14 to redact only the declarant's name and minimal identifying information.

15 **IV. CONCLUSION**

16 For the foregoing reasons, X Corp. respectfully moves this Court to grant its Motion for
 17 Administrative Relief to keep sealed the Supplemental Corporate Disclosure Statement and the
 18 identifying information of the X Corp. employee submitting the Employee Declaration.

19 Dated: September 20, 2023

WHITE & CASE LLP

21
 22 By: /s/ J. Jonathan Hawk
 J. Jonathan Hawk

23 Attorneys for Defendant X
 24 CORP., as successor in interest
 25 to first named Defendant
 26 Twitter, Inc.